



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Stefan C. Passatino, Esq.
Ben Keane, Esq.
McKenna, Long & Aldridge LLP
1900 K Street, N.W.
Washington, DC 20006-1108

JUN 15 2017

RE: MUR 6818
Allen Weh
Allen Weh for Senate and Rebecca Sanchez
in her official capacity as treasurer
Diego Espinoza
CSI Aviation Services, Inc.
Jerry W. Bettman

Dear Messrs. Passatino and Keane:

On May 16, 2014, the Federal Election Commission notified your clients, Allen Weh, Allen Weh for Senate and Rebecca Sanchez in her official capacity as treasurer (the "Committee"), CSI Aviation Services, Inc. ("CSI"), Diego Espinoza, and Jerry W. Bettman, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 8, 2017, the Commission considered the Complaint, and determined to dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b) and found no reason to believe that it violated 52 U.S.C. §§ 30103(a), 30104(a), 30116(f), or 30118. The Commission also found no reason to believe that Allen Weh violated 52 U.S.C. § 30102(e)(1), that CSI or Diego Espinoza violated 52 U.S.C. § 30118, or that Dr. Bettman violated 52 U.S.C. § 30116(a)(1)(A), and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decisions, is enclosed for your information.

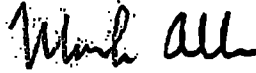
Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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Stefan C. Passatino, Esq.
Ben Keane, Esq.
MUR 6818 (Weh)
Page 2 of 2

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Attachment
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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RESPONDENTS: Allen Weh
Allen Weh for Senate and Rebecca Sanchez
in her official capacity as Treasurer
CSI Aviation, Inc.
Diego Espinoza
Jerry W. Bettman
MUR: 6818

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II. FACTUAL AND LEGAL ANALYSIS

A. Alleged Reporting Violations

1. Failure to File Statements and Reports as a Candidate

The Act provides that once an individual achieves candidate status, the candidate must file a Statement of Candidacy within fifteen days and designate a principal campaign committee, which must file its Statement of Organization no later than ten days after it has been designated.³

Under the Act, an individual becomes a candidate for federal office when his or her campaign either receives in excess of \$5,000 in contributions or makes in excess of \$5,000 in expenditures.⁴ An individual may nevertheless raise or spend more than \$5,000 without triggering candidate status if he or she is engaged in permissible "testing the waters" activities and has not yet decided to pursue office.⁵ While testing the waters, however, an individual may not solicit, receive, or spend funds in connection with an election for federal office unless those funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁶ A committee is required to maintain records of expenditures incurred during the testing the waters period and to disclose those expenditures in its first disclosure report filed with the Commission.⁷ Thereafter, the Act requires a candidate's authorized committee to disclose to the Commission all receipts, expenditures, and disbursements.⁸

³ 52 U.S.C. §§ 30102(e)(1), 30103(a).

⁴ 52 U.S.C. § 30101(2).

⁵ See 11 C.F.R. §§ 100.72(a), 100.131(a).

⁶ *Id.*

⁷ See 11 C.F.R. §§ 101.3, 100.72(a), 100.131(a), 101.2(b), 104.3(a).

⁸ 52 U.S.C. § 30104(a), (b).

1 Weh filed his Statement of Candidacy on January 15, 2014, and the Committee filed its
2 Statement of Organization on January 23, 2014, and its first disclosure report, the 2014 April
3 Quarterly Report, on April 14, 2014. The Complaint alleges that Weh had crossed from testing
4 the waters to candidate status as early as October 2013, and therefore, he did not timely file his
5 Statement of Candidacy and the Committee failed to file a 2013 Year End disclosure report.⁹
6 The Complaint's conclusion that Weh decided to become a candidate earlier than reported relies
7 on several items. It cites a December 5, 2012, online *Roll Call* article that quoted Weh as stating,
8 "As anybody should do when considering a move like this, you do your homework. . . and gather
9 enough information to make a sound decision."¹⁰ It also contends that information "obtained
10 from GOP member, Mike Nagel," reflects that Weh introduced himself as a candidate for Senate
11 to several attendees at a Republican Party fundraising event in October 2013.¹¹ The
12 Complainant further alleges that she attended an event in December 2013 at which two
13 Republican Party officials, Russell Allen and Caren Lulich, announced that Weh was "certainly
14 in the race for United States Senate."¹² Finally, the Complaint alleges that, as early as October
15 2013, Weh was circulating nominating petitions in three New Mexico counties to get on the
16 ballot.¹³

17 The record here does not support the claim that Weh and the Committee failed to file any
18 report that was due before January 2014. Even if Weh decided to become a candidate for federal

⁹ Compl. at 1-2 (May 9, 2014).

¹⁰ *Id.* at 1 (citing Kyle Trygstad, *New Mexico: Weh Considering 2014 Senate Bid*, ROLL CALL (Dec. 5, 2012), <http://atr.rollcall.com/new-mexico-weh-considering-2014-senate-bid/>).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

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1 office before January 2014 as alleged, the available information does not suggest that his
2 campaign raised or spent \$5,000 prior to January 2014.¹⁴ For example, even attributing the
3 alleged petition drive activity to Weh,¹⁵ the Respondents represent that the records maintained by
4 Weh's friends and family during that period reflect less than \$5,000 in activity,¹⁶ and the
5 Commission is aware of no information suggesting otherwise.

6 Accordingly, the Commission finds no reason to believe that Weh violated 52 U.S.C.
7 § 30102(e)(1), or that the Committee violated 52 U.S.C. §§ 30103(a) or 30104(a).

8 2. Itemization of Expenditures

9 A candidate's authorized committee must itemize all disbursements, including operating
10 expenditures that exceed \$200 or aggregate to over \$200 when added to other disbursements in
11 the same category made to the same payee during the election cycle.¹⁷ The Complaint alleges
12 that the Committee "hid payroll expenditures" on its 2014 April Quarterly Report by only
13 reporting lump sum disbursements to its payroll vendor, Payroll Company, and failing to
14 properly itemize the individual payroll disbursements for each of its staff members.¹⁸

¹⁴ See 52 U.S.C. § 30101(2).

¹⁵ See 11 C.F.R. §§ 100.72(b)(5), 100.131(b)(5) (action taken by the individual to qualify for the ballot under state law suggests that an individual has decided to become a candidate).

¹⁶ Committee Resp. at 13; Consolidated Resp. at 13.

¹⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9. Cf. FEC, POLITICAL ACTION COMMITTEES, <http://www.fec.gov/rad/pacs/FederalElectionCommission-RAD-PACs.shtml#disb10> (last visited May 5, 2017) (explaining that a "lump sum paid to the payroll company must be followed by MEMO entries that include the individuals that were the ultimate recipients of the salary payments. . . . Payroll company disbursements and employee MEMO entries are disclosed in the same manner as credit card payments and ultimate recipients. (11 C.F.R. § 104.9)"); Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (addressing disclosure of ultimate payees with respect to credit card payments).

¹⁸ Compl. at 2-3.

1 The Committee's original 2014 disclosure reports do not itemize payroll expenditures to
2 individuals. Rather, on each report the Committee disclosed only one lump sum disbursement to
3 Payroll Company for "Salaries" and "Salaries & Fees."¹⁹ In 2014, the Committee disclosed a
4 total of \$285,953 in disbursements to Payroll Company for this purpose. The Committee's
5 campaign manager, Diego Espinoza, submitted a sworn declaration with the two Responses in
6 which he represents that, "As remuneration for my responsibilities as [the Committee's]
7 Campaign Manager, I receive a monthly salary from the Committee."²⁰ While the Committee
8 itemized disbursements to Espinoza for travel, mileage and advertising expenditures, its original
9 2014 disclosure reports reflected no itemized disbursements for salary payments to Espinoza. In
10 its Response, the Committee denied violating the regulatory requirement to itemize payroll
11 disbursements and asserted that, even though it was not required to, it would be amending its
12 2014 April Quarterly Report to "reflect end-user payroll expenditures made to [Committee] staff
13 during the appropriate reporting period."²¹

14 On January 4, 2015, the Commission's Reports Analysis Division ("RAD") sent Requests
15 for Additional Information ("RFAs") to the Committee inviting it to explain its failure to
16 itemize payroll disbursements on the 2014 October Quarterly and Pre-General Election
17 Reports.²² On January 22, 2015, the Committee filed Amended 2014 April, July and October

¹⁹ This figure represents the sum of all such disclosures made in the Committee's original 2014 April Quarterly, Pre-Primary, July Quarterly, October Quarterly, Pre-General and Post-General Reports filed with the Commission.

²⁰ Decl. of Diego Espinoza ¶ 6 (June 25, 2014) ("Espinoza Decl.") (attached as Exhibit 6 to the Committee Response and Consolidated Response).

²¹ Committee Resp. at 21-22.

²² See RFAI to Weh for Senate re 2014 October Quarterly Report at 5 (Jan. 4, 2015); RFAI to Weh for Senate re 2014 Pre-General Election Report at 1 (Jan. 4, 2015).

1 Quarterly, Pre-Primary, Pre-General and Post-General Election Reports, which itemized
2 individual payroll disbursements.

3 Notwithstanding the Committee's claim that it properly disclosed payroll disbursements,
4 the record reflects that the Committee failed to properly itemize its salary payments to Espinoza
5 and other Committee staff. Instead, the Committee reported lump-sum disbursements to its
6 direct payroll vendor without identifying the individual employees who received salary payments
7 that exceeded \$200 during the cycle, which does not comply with both 11 C.F.R. § 104.3(b)(4)(i)
8 and (vi) requirements for the reporting of disbursements by a candidate's authorized committee.
9 Although the Committee stated in its June 2014 response to the Complaint that it would amend
10 its 2014 April Quarterly Report to reflect payroll payments to Committee staff, the Committee
11 did not amend any of its reports until January 22, 2015.

12 Nevertheless, in view of the Committee's corrective amendments shortly after receiving
13 RFAs that specifically addressed the requirement to itemized payroll disbursements, the
14 Commission exercises prosecutorial discretion and dismisses the Committee's violations of
15 52 U.S.C. § 30104(b) for failing to properly itemize payroll expenditures.²³

16 **B. Alleged Corporate Contribution**

17 The Act prohibits corporations from making any contributions in connection with a
18 federal election.²⁴ Candidates and political committees are prohibited from knowingly accepting
19 corporate contributions, and corporate officers and directors are prohibited from consenting to

²³ See, e.g., MUR 6576 (McLeod) F&LA at 12-13 (dismissing committee's failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election).

²⁴ 52 U.S.C. § 30118.

1 corporate contributions.²⁵ The Act defines a “contribution” as “any gift, subscription, loan,
2 advance, or deposit of money or anything of value made by any persons for the purpose of
3 influencing any election for Federal Office.”²⁶ An “in-kind contribution” includes “anything of
4 value.”²⁷

5 The Complaint alleges that Weh’s corporation, CSI Aviation, Inc., made prohibited in-
6 kind contributions to the Committee by paying the salary of Diego Espinoza, Weh’s campaign
7 manager, who is also an employee of CSI.²⁸ The complaint also asserts that Espinoza is “very
8 likely handling campaign business” using CSI’s corporate offices.²⁹ While Respondents admit
9 that Diego Espinoza is both a part-time employee of CSI and Weh’s campaign manager, they
10 deny the allegation that CSI is making any contribution to the campaign, and provide a sworn
11 declaration from Diego Espinoza in support of their contention.³⁰

12 In his statement, Espinoza asserts that he is a site supervisor at CSI who went from full to
13 part-time status in January 2014 to work for the Committee.³¹ He represents that he accepted a
14 50% salary reduction from his \$55,000 full-time status annual salary and reduced his hours at
15 CSI to 15-20 per week.³² Espinoza further declares that his duties for the Committee involve

²⁵ *Id.*

²⁶ *Id.* § 30101(8)(A)(i).

²⁷ 11 C.F.R. § 100.52(d)(1).

²⁸ Compl. at 2.

²⁹ *Id.*

³⁰ Committee Resp. at 14-19, Ex. 6; Consolidated Resp. at 14-19, Ex. 6.

³¹ Espinoza Decl. ¶¶ 1-2.

³² *Id.* ¶ 3. Espinoza asserts that the change in hours and reduction in salary and workload are memorialized in administrative documents in the possession of CSI’s personnel department. *Id.*

1 overseeing fundraising, advertising, polling, policy, outreach, strategy and administrative
2 operations as well as managing the campaign's day-to-day activities and conduct of its
3 employees, contractors, vendors and volunteers. His work at CSI involves supervising CSI sub-
4 contractors, overseeing negotiations with vendors, and managing daily operations in its special
5 contracts division.³³ Espinoza asserts he is paid a separate salary by the Committee for his work
6 as campaign manager.³⁴ The Committee's amended disclosure reports show that it paid
7 Espinoza a salary of \$1,500 twice a month from February 28, 2014 through October 31, 2014, a
8 monthly salary that is slightly more than the \$2,292 reduced monthly salary that he received
9 from CSI. Espinoza avers that none of the salary and benefits for which he is paid by CSI is for
10 Committee work, and that he refrains from using CSI resources or performing any political
11 activities related to the campaign while working in CSI offices or on CSI time.³⁵

12 The available information does not suggest that Espinoza was paid by CSI to perform
13 work for the Committee or utilized CSI resources for the benefit of the campaign. Other than the
14 fact that Espinoza worked for both entities at the same time, as the Respondents admit, the
15 Complaint does not offer any facts that tend to undermine Espinoza's sworn statement
16 concerning the division of his responsibilities between the two entities and their division of
17 payment for his services. Thus, the Commission finds no reason to believe that CSI Aviation
18 Services, Inc., Diego Espinoza, or the Committee violated 52 U.S.C. § 30118.

³³ *Id.* ¶¶ 2, 5.

³⁴ *Id.* ¶ 6.

³⁵ *Id.* ¶¶ 4, 7, 8.

C. Alleged Excessive Contribution

During the 2014 election cycle, the Act limited the contributions by an individual person to a candidate or his authorized committee to \$2,600 per election.³⁶ No candidate or political committee may knowingly accept a contribution in excess of the limits set forth in section 30116.³⁷ The Complaint alleges that Jerry W. Bettman made a contribution of \$15,000 to the Committee on January 23, 2014, an amount in excess of the contribution limit, which the Committee failed to either refund or properly report.³⁸

The available information indicates that Bettman did not make an excessive contribution to the Committee. The Committee's 2014 April Quarterly Report reflects a receipt of \$5,000 from Bettman for the primary election on January 23, 2014, \$2,400 of which was redesignated to the general election.³⁹ The Committee contends that Bettman made his contribution in the form of a \$5,000 personal check that was not designated for either the 2014 primary or 2014 general election.⁴⁰ The Committee presumptively designated \$2,600 to the primary election and \$2,400 to the general election, as permitted under 11 C.F.R. § 110.1(b), and notified Bettman of its action, offering him the option of receiving a refund of the \$2,400 if he so elected.⁴¹

Because the available information suggests that the Committee received a single \$5,000 contribution and followed the proper procedures for a timely, presumptive redesignation of a

³⁶ 52 U.S.C. § 30116(a)(1)(A). See 2013-14 Campaign Cycle Contribution Limits, <http://www.fec.gov/info/contriblimitschart1314.pdf>. (last visited May 5, 2017).

³⁷ *Id.* § 30116(f).

³⁸ Compl. at 3.

³⁹ Committee Resp. at 25, Ex. 10 (2014 April Quarterly Report at 9). Weh was a candidate in the June 3, 2014 primary election and the November 4, 2014 general election.

⁴⁰ *Id.* at 24-25, Ex. 8 (Decl. of Rebecca Sanchez ¶ 6 (June 26, 2014)).

⁴¹ *Id.* at 25-26, Ex. 11 (Committee redesignation letter to Bettman (Jan. 23, 2014)).

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See 11 C.F.R. § 110.1(b).